In the Supreme Court
OF THE
United States

OCTOBER TERM, 1971

No. 71-507

WILFRED KEYES, et al., *Petitioners,*

vs.

SCHOOL DISTRICT NO. 1, DENVER, COLORADO, et al.,
Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Tenth Circuit

MOTION FOR LEAVE TO FILE BRIEF AMICUS CURIAE

The Mexican American Legal Defense and Educational Fund moves this Honorable Court for leave to file the attached Brief Amicus Curiae.

Petitioners' attorney has granted consent for the filing of this brief. The consent of Respondents' attorney was requested but refused.

The Mexican American Legal Defense and Educational Fund (MALDEF) is a non-profit corporation organized under the laws of the State of Texas whose

purpose is the protection of the civil rights of Spanish surnamed people in the Southwest. In pursuance of this purpose MALDEF has represented clients in matters involving employment discrimination, voting rights, and public accommodations discrimination. However, it is in the area of improving the educational process that MALDEF has devoted much of its resources.

Although *Mendez v. Westminster School District*, 64 F.Supp. 544 (C.D. Cal.) aff'd 161 F.2d 774 (9th Cir. 1947) held that school segregation against Chicanos* violated the equal protection clause, there has never been a holding by this Court to that effect. The Chicano community in the Southwest continues to attend segregated inferior schools.

This community believes that a quality educational program in an integrated setting provides the only hope for equal educational opportunity. As a result of this mandate MALDEF is counsel for Chicano parents and children in lawsuits throughout the Southwest including Dallas, Houston, Austin, El Paso and New Braunfels, Texas; Fullerton, California; Glendale, Arizona; Portales, New Mexico. These cases attack segregated schools and discriminatory treatment. Consequently, the whole Chicano community and MALDEF are vitally interested in the outcome of this case.

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*Hispano is the word used in the record to denote Spanish speaking people in Denver. However, Chicano is the preferred name for Spanish speaking people in the Southwest.

MALDEF requests permission to file this brief in order to present an issue only touched upon by Petitioners; why Chicanos are an identifiable class for Fourteenth Amendment purposes. In addition, Amicus believes the constitutional wrongs which Chicanos have suffered over the years need elucidation before this Court.

Wherefore, MALDEF prays that this Court grant leave to file the attached Brief Amicus Curiae.

Dated, May 4, 1972.

Respectfully submitted,

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ALAN EXELROD,
Attorneys for Amicus Curiae.

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BRIEF AMICUS CURIAE

INTEREST OF THE AMICUS CURIAE

The Mexican American Legal Defense and Educational Fund is a non-profit corporation established in 1968 under the laws of the State of Texas. Its purpose is to represent Spanish surnamed people in the Southwest whose civil rights are being violated. MALDEF offices are located in San Francisco, Los Angeles, San Antonio and Denver.

A primary goal of the organization since its inception has been to end the patterns of ethnic isolation and inferior schools that pervade the Southwest. To

this end MALDEF is representing clients throughout the Southwest. See the Motion for Leave to File an Amicus Brief. Since it is likely that these cases will be strongly affected by the outcome of this case, MALDEF has an immediate direct interest in this lawsuit.

SUMMARY OF THE ARGUMENT

Amicus curiae make the following argument:

Chicanos in the Southwest are subject to deeply ingrained patterns of economic, political and educational discrimination. As a result, they are entitled to be considered an identifiable class for equal protection clause purposes. The demographic data and the evidence in this record prove that Chicanos in Denver have been discriminated against in this traditional Southwestern manner.

The District Court erred in refusing to find that Chicanos had been segregated by policies and practices of the Denver school district. The record showed a consistent unlawful pattern of discrimination in student and faculty assignment practices. The District Court correctly ruled that inequalities in education existed at minority schools. However, it erred in distinguishing between schools that had over 70% of one minority and schools that had over 70% of the two minorities, Negro and Chicano, for purposes of relief. The purposes of desegregation are not accomplished by integrating two economically and educationally disadvantaged minority groups.

The Court of Appeals erred by rejecting the equalization plan adopted by the District Court. The District Court's plan in regard to Spanish language training, teaching of Chicano culture and use of teacher aides was an appropriate use of his equitable powers to correct a proven constitutional wrong.

ARGUMENT

I. INTRODUCTION

The Chicano[1] is the forgotten minority.[2] He is the largest minority group in the Southwestern United States. He is the field hand. He is the janitor. Much as the Negro was forceably made part of this nation as a slave and still today bears the badges of this servitude, *Jones v. Albert Mayer & Co.*, 392 U.S. 409 (1968), so too were Chicanos forceably made part of this nation—they were the vanquished remnants, conquered heirs of the Spanish Conquistadores. Their vanquishment has made them exiles in their own land —the dominant Anglo[3] society has treated them as second class citizens.

Chicanos in Denver and the Southwest generally receive an inferior education, suffer occupational discrimination, and are deprived of crucial political rights and power that would allow them to change

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[1]Hispano is the word used in the record to denote Spanish speaking people in Denver. However, Chicano is the preferred name for Spanish speaking people in the Southwest.

[2]The Southwest for purposes of this brief includes Arizona, California, Colorado, New Mexico and Texas.

[3]An Anglo is a non-Spanish surnamed member of the Caucasian race.

their socio-economic status through the political process. The opinion of the courts in this case does not overtly describe this exclusion of the Chicano. The purpose of this brief is to inform the Court of the plight of the Chicano and to help the Court understand why the remedies of desegregation and equalization are so important to him.

II. CHICANOS COMPRISE AN IDENTIFIABLE CLASS FOR PURPOSES OF THE EQUAL PROTECTION CLAUSE OF THE FOURTEENTH AMENDMENT

A. The Chicano in the Southwest Has Suffered Social, Economic and Political Discrimination

The Chicano has been subjected to the traditional methods used to create second class citizenship. He has been segregated in swimming pools,[4] hospitals,[5] movie theaters,[6] toilet facilities.[7] Racial and ethnic restrictive covenants in real estate deeds regularly included Chicanos.[8] The result was segregated barrios[9] and little opportunity to move into Anglo neighborhoods.

The administration of justice has been infected with the evil of second class citizenship for the Chi-

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[4]Beltran v. Patterson, U. S. District Court for the Western District of Texas, No. 68-59-W.

[5]*Cisneros v. Corpus Christi Independent School District*, 324 F.Supp. 599, 613 (S.D. Tex. 1970) appeal pending.

[6]*Perez v. Sonora Independent School District*, U. S. District Court for the Northern District of Texas, No. CA-6-224.

[7]*Hernandez v. Texas*, 347 U.S. 475, 480 (1954).

[8]*Clifton v. Puente*, 218 S.W.2d 272 (Court of Civil Appeals Texas 1948). ref.

[9]That part of town where Chicano homes are concentrated.

cano.[10] The Texas Rangers hired their first Chicano two years ago. There are few Chicano district attorneys, judges,[11] or even law students.[12] Employment discrimination has been documented extensively.[13]

Political rights were for a long period suppressed but only recently have the courts opened up the political process.[14]

It is in the area of education that the Chicano suffers extraordinary deprivation. Segregation practices are widespread.[15] The reasons for the discrimination are much like those used to justify segregation

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[10]U. S. Commission on Civil Rights, *Mexican Americans and the Administration of Justice in the Southwest*, 1970.

[11]*Ibid*, p. 48.

[12]Reynoso, Cruz, La Raza, The Law and the Law Schools, 170 U.Tol.L.R. 809 (1970).

[13]Schmidt, Fred, *Spanish Surnamed Employment in the Southwest* published by U. S. Civil Rights Commission. Burma, John, *Mexican Americans in the United States*, 1970 p. 147-208. For case law see *Marquez v. Ford Motor Co.*, 440 F.2d 457 (8th Cir. 1971). *Urquidez v. General Telephone Co.*, 2 EPD ¶10,145 (D.C. N.Mex. 1969), *U. S. v. Longshoremen's Union*, 4 EPD ¶7687 (S.D. Tex. 1970).

[14]Texas had a poll tax which keep the Chicano poor from the polling place, *U. S. v. Texas*, 252 F.Supp. 234 (W.D. Tex. 1966) and a restrictive registration procedure which excluded Chicanos, *Beare v. Smith*, 321 F.Supp. 1100 (S.D. Tex. 1971). California had literacy requirements which prevented even those fully literate in Spanish from voting, *Castro v. State*, 3 Cal.3rd 223, 466 P.2d 244 (1970). Arizona similarly had stringent literacy requirements. Ariz. Revised Stat. §16-101. See also *Regester v. Bullock*, U. S. District Court for the Western District of Texas, No. A-71-CA-143 (Holding multi-member state representative districts discriminated against Chicanos).

[15]For information about the isolation of Chicano school children see U. S. Commission on Civil Rights, *Mexican American Study Project Report No. 1;* Salinas, Guadalupe, Mexican Americans and the Desegregation of Schools in the Southwest, 8 Houston L.R. 929 (1971); Hearings before the Select Committee on Equal Educational Opportunity of the U. S. Senate, 91 Congress Second Session, Part 4, Mexican American Education, Aug. 18-21, 1970.

in the South.[16] The result of this segregation with its creation of inferior status has been a dismal record of achievement in the schools. In 1960 in the Southwest the median years of school of Chicanos 25 years and older was 7.1 as compared to 12.1 for Anglos and 9.0 for non-whites.[17] Drop-out rates for Chicanos even today are considerably higher than for any other racial or ethnic group.[18] Later portions of this brief will reveal that the Denver school system fits too easily into this Southwestern pattern of segregation and inferior education.

The Chicano is living this legacy of a conquered people. Applying the words of a Texas Federal Court to the Southwest generally:

> "Because of long standing, educational, social, legal, economic, political and other widespread and prevalent restrictions, customs, traditions, biases and prejudices, some of a so-called de jure and some of a so-called de facto character, the Mexican American population of Texas . . . has historically suffered from and continues to suffer from, the results and effects of invidious discrimination and treatment in the fields of education, employment, economics, health, politics and others."[19]

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[16]Carter, Thomas, *Mexican Americans in School; A History of Educational Neglect*, 1970, pp. 67-74.

[17]*Ibid.*, p. 23.

[18]U. S. Commission on Civil Rights, *The Unfinished Revolution*, Mexican American Study Series Part II 1971, p. 20.

[19]*Register*, supra, Note 14, p. 45.

B. The Courts Have Held Chicanos To Be A Class Protected By The Equal Protection Clause

This Court, shortly before deciding the landmark case for Negro Americans, *Brown v. Bd. of Education*, 347 U.S. 483 (1954), recognized for the first time that Chicanos are also entitled to Fourteenth Amendment protections. In *Hernandez v. Texas*, 347 U.S. 475 (1954), the total exclusion of Chicanos from grand juries was proven. The Court in finding this unconstitutional stated:

> "Throughout our history differences in race and color have defined easily identifiable groups which have at times required the aid of the courts in securing equal treatment under the law. But community prejudices are not static, and from time to time other differences from the common norm may define other groups which need the same protection. Whether such a group exists within a community is a question of fact. When the existence of a distinct class is demonstrated, and it is further shown that the laws, as written or as applied, single out that class for different treatment not based on some reasonable classification, the guarantees of the Constitution have been violated. The Fourteenth Amendment is not directed solely against discrimination due to a 'two-class' theory—that is, based upon differences between 'White' and 'Negro'." 347 U.S. at 478.

The Chicano community was at first slow to use the potent combination of *Hernandez* and *Brown* to remedy the pervasive discrimination described in Section II A above. But in recent years, one court after another has held that the constitutional guarantees of

the Fourteenth Amendment apply to Chicanos no less than to Negroes. For example, the *Hernandez* rule regarding discrimination against Chicanos in the composition of grand juries has been applied to a large Texas city, *Muniz v. Beto,* 434 F.2d 697 (5th Cir. 1970). Chicano political rights are now being protected under the Fourteenth Amendment, see *Regester,* supra, Note 14, *Castro v. State,* supra, Note 14. Employment discrimination under Title VII of the Civil Rights Act of 1964 has been proven, see cases cited in Note 13, supra.

Because education is at the root of many of the socio-economic problems of the Chicano, there has been considerable litigation attempting to undo school segregation. Courts have been most diligent in elaborating upon the reasons for considering Chicanos an identifiable class for equal protection purposes in these cases. In *Cisneros v. Corpus Christi I.S.D.,* 324 F.Supp. 599, 607 (S.D. Tex. 1970) appeal pending, the Court observed:

> ". . . [I]t is clear to this Court that these people for whom we have used the word Mexican Americans to describe their class, group, or segment of our population, are an identifiable ethnic minority in the United States, and especially so in the Southwest [and] in Texas . . . This is not surprising; we can notice and identify their physical characteristics, their language, their predominant religion, their distinct culture, and, of course, their Spanish surnames. And if there were any doubt in this court's mind, this court could take notice, which it does, of the congressional enactments, government studies and commissions on this problem."

See also *U.S. v. Texas,* U.S. District Court for the Eastern District of Texas, No. 5281 (E.D. Tex. 1971); *Soria v. Oxnard School District Board of Trustees,* 328 F.Supp. 155 (C.D. Cal. 1971); *Alvarado v. El Paso Independent School District,* 445 F.2d 1011 (5th Cir. 1971). Even where courts have refused to find that de jure segregation has been practiced against Chicanos, they have held that Chicanos are an identifiable minority group, cf. *Tasby v. Estes,* U.S. District Court for the Northern District of Texas, No. 3-4211-C, appeal pending. *U.S. v. Texas Education Agency* (Austin I.S.D.), U.S. District Court for the Western District of Texas, No. A-70-CA-80, appeal pending.[20]

The legal reality of the Chicanos' situation in the Southwest has seen courts remedy past legal deprivation only recently. Political, economic and educational freedoms have only now begun to receive constitutional protection by the courts. A holding that Chicanos are not a separate identifiable class would have widespread repercussions in all areas of the law as it is developing in the Southwest. For these reasons Amicus urge this Court to reaffirm *Hernandez*; to hold that Chicanos are, historically, a deprived class, and are thereby, an identifiable group, entitled to receive protection under the Fourteenth Amendment.

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[20]School financing systems have also discriminated against Chicanos. *Rodriguez v. San Antonio I.S.D.*, 337 F.Supp. 280, 282 (W.D. Tex. 1972) appeal pending U. S. Supreme Court. See also *Chance v. Bd. of Examiners*, 330 F.Supp. 203 (S.D.N.Y. 1971) aff'd ____ F.2d ____ (2nd Cir. 1972) where an examination for an administrative position in the public schools was held to discriminate against Puerto Ricans.

III. CHICANO STUDENTS HAVE BEEN SEGREGATED AND DENIED AN EQUAL EDUCATIONAL OPPORTUNITY IN THE DENVER SCHOOL SYSTEM AND THEREFORE APPROPRIATE REMEDIES MUST BE CREATED TO ALLEVIATE THIS DENIAL OF EQUAL PROTECTION.

A. Chicanos In The State of Colorado And The City of Denver Have Suffered The Same Discriminatory Treatment As Chicanos In Other Parts of The Southwest

The most comprehensive study about the condition of the Chicano in Colorado ever written concludes:

"In general, the average Spanish surnamed resident of Colorado belongs to most of the following minority groups and possesses the traits associated with these groups.

1. The poor;
2. The poorly educated;
3. The unhealthy;
4. The victims of discrimination;
5. The illhoused;
6. The rural folk;
7. The Spanish-Mexican-American tradition;
8. The law violator;
9. The legally unprotected;
10. The politically unrepresented."[21]

These conclusions are borne out by the available data.

In the area of employment, Chicanos are underrepresented at all levels of the job rolls and over-

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[21] Colorado Commission on Spanish-Surnamed Citizens, *Report to the Colorado General Assembly: The Status of Spanish Surnamed Citizens in Colorado*, Jan. 1967, p. 15.

represented on the unemployment rolls.[22] "Employment rosters within Colorado public institutions generally show a very low incidence of Spanish-surnamed employees." "It is clear from this data [on municipalities] that the Spanish-surnamed population is extremely under-represented in public employment in general."[23] A recent study shows that in Denver the same pattern prevails. Although 9.3% of the total work force in three of the most important industries in Denver are "Officials and Managers", only 1.3% of the Chicanos are in this category. 82% of employed Chicanos in these industries are in blue collar jobs, nearly twice the percentage in the total work force.[24]

Health conditions reveal "a serious differential between the Spanish-surnamed and the general population."[25] Mortality rates show that Chicanos die on an average of ten years earlier than the rest of the population.[26]

Housing segregation in Denver is acute and is worse than the Southwest generally.[27]

B. Chicanos Have Been Segregated and Denied An Equal Educational Opportunity in Denver

The education afforded Chicano students in the defendant school district mirrors the inferior educa-

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[22] *Ibid.*, p. 27, "The figures show that the percent of all unemployed which is Spanish surnamed is, in most countries, significantly higher than the percent of the labor force which is Spanish-surnamed."

[23] *Ibid.*, p. 35.

[24] Schmidt, supra, Note 13, p. 16.

[25] Colorado Commission, supra, p. xviii.

[26] Schmidt, supra, p. 55.

[27] Grebler, Moore, Guzman, *The Mexican American People: The Nation's Second Largest Minority*, 1970, p. 277.

tion provided in the Southwest generally. Ethnic isolation and unequal treatment pervade the Denver school system.

Chicanos are in large part isolated from the majority Anglo community. Several schools are almost totally Chicano (App. 2040a). Many Chicano children attend school with Negroes, the other disadvantaged minority in Denver. 31.6% of Chicano elementary students attend schools that are over 75% minority (App. 2038a). 28 out of 93 elementary schools in the district are over 50% minority (App. 2040).

The sources of this racial and ethnic isolation are the policies and practices of the defendant school district. The district assigned minority faculty to minority schools because the Anglo community refused to permit these teachers in the Anglo schools (303 F.Supp. at 294). The district maintained a neighborhood school policy that was shot through with optional zones to allow Anglo children to escape minority schools. The district constructed the predominantly minority New Manual High School with just enough capacity to insure that it would remain a minority school. The district maintained enrollment at minority schools under capacity while overcrowding Anglo schools to avoid mixing the two groups (313 F.Supp. at 71).

Whatever nonracial explanations are conjured up for these actions, the simple fact remains, the operative effect of the school board assignment policies was to exclude Negroes and Chicanos from Anglo schools and to place Negroes and Chicanos together in predominantly minority schools.

Along with segregation, the school district provided distinctly unequal educational opportunities for minority students.

Looking first to teacher assignment policies, the record reflects that in 1968: 1. The minority schools had almost twice as many probationary teachers as the Anglo schools (App. 2062a); 2. The minority schools had less than one half as many teachers with 10 or more years experience in the Denver public schools than the Anglo schools (App. 2064a); 3. The median years of Denver public school experience of teachers in minority schools was less than half that of Anglo schools (App. 2066a).

Turning next to physical facilities, Anglo schools are on the average half the age of minority schools (App. 2070a). Although these schools were built at a time when there was much more land available in urban areas than at present, minority schools have considerably less land per child than Anglo schools (App. 2068a).

In the area of curriculum, the Voorhees Report (Plaintiff's Exhibit 20) implies that the existing uniform curriculum throughout the school system met the needs of the Anglo majority but not the needs of the disadvantaged minorities. The same treatment in this case was in fact "unequal" treatment.

The results of this disparity in treatment are predictable. Achievement levels at the minority schools fall far below those at the Anglo schools at every stage of the education process.

STANFORD ACHIEVEMENT TESTS, APRIL 1969
MEAN SCORES BY SCHOOL AND GRADE
(APP. 2102a, 2104a)

	GRADE LEVEL AT WHICH TESTS WERE ADMINISTERED				
	2.6	3.6	4.6	5.6	6.6
Average Grade Level Score for Minority Schools	2.27	2.85	3.58	4.42	4.91
Average Grade Level Score for Anglo Schools	3.12	4.26	5.44	6.53	7.01

One need only compare Plaintiff's Exhibit 375 (App. 2094a) with Plaintiff's Exhibit 372 (App. 2088a), which show that achievement levels at the minority schools in Northwest Denver are considerably lower than at Anglo schools in the Southwest, to understand fully the impact of unequal educational opportunity.

If more proof is necessary, let us check the ultimate test of a school system, the extent to which students complete high school. It is here that the human tragedy resulting from unequal treatment and low achievement are reflected. The Chicano drops out earlier and in greater numbers in Denver than either of the other two groups. By seventh grade some Chicano students are lost from the schools and by twelfth grade, the exodus is a torrent.

SCHOOL POPULATION STATISTICS BY RACE AND ETHNIC ORIGIN FOR 1968

	Chicano		Negro		Anglo		Other	
	No.	%	No.	%	No.	%	No.	%
Sr. High School (Grades 10-12)	2,996	12.8	2,447	10.4	17,821	76.1	160	.7
Jr. High School (Grades 7-9)	3,629	19.5	2,888	15.5	11,886	64.0	173	1
Elementary School (K-6)	11,986	22.0	8,304	15.2	33,678	61.7	608	11

(These figures are from App. 2038a).

Amicus has demonstrated that Chicanos in the Southwest are subject to the same kind of overt and subtle differences in treatment as Negroes in this country. The discrimination documented above proves that the Denver school system is but a microcosm of the educational system of the Southwest.

C. The Trial Court Correctly Found That Inequalities Existed In The Minority Schools, But It Also Should Have Ruled That Racial And Ethnic Isolation Was Caused By School District Policies and Practices

The trial court concluded that except for those schools dealt with in the 1969 school board resolutions, nonracial explanations for ostensibly segregating practices prevented a finding of de jure segregation. Amicus urges this Court to reverse this finding. Racial and ethnic motivations pervaded the decisions of the Denver school board. The evidence on inequalities in school services is self-explanatory. The trial court additionally found that the school board was aware of the effect of its policies but practiced "eye-closing" and "head-burying" (313 F.Supp. at 76) to avoid integration. Further, the Court found that the decisions of the school board were dictated by a consensus of the community (313 F.Supp. at 73). However, this controlling Anglo[28] consensus was in part responsible for the existing housing segregation.[29] Because the primary contributors to the consensus were those who helped establish segregated housing patterns, their intent to segregate should be imputed to the board.

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[28]Negroes and Chicanos never seemed to be a part of this consensus. (313 F. Supp. at 70, 71)

[29]"[I]f cause or fault has to be ascertained it is that of the community as a whole in imposing, in various ways, housing restraints." (313 F. Supp. at 75)

In regard to unequal educational opportunities the trial court concluded:

> "The evidence in the case at bar establishes, and we do find and conclude, that an equal educational opportunity is not being provided at the subject segregated schools within the District. . . . The evidence establishes this beyond any doubt."

Amicus agrees with this determination. However, the court erred in leaving out of its list of schools those where the combined total of Negro and Chicano students was over 70% but neither of the groups was individually over 70%. The same factors of teacher turnover, inferior physical facilities, and lower achievement are present in these over 70% black and Chicano schools (App. 2122a, 2124a), and therefore the same relief should be afforded.

The Court of Appeals reversed the trial court with regard to both the desegregation and equalization remedies. It did not deny the existence of the inequalities but by using the wrong constitutional standard and disregarding these inequalities the appellate court found no state action. The error in the appellate court's reasoning is manifest and Amicus defers to Petitioners' argument on this issue (Brief of Petitioners, p. 114).

D. Comprehensive Desegregation Is An Appropriate Remedy To Correct The Existing Constitutional Wrong

After hearing extensive evidence on the issues of relief the trial court concluded:

> ". . . The only feasible and constitutionally acceptable program—the only program which fur-

nishes anything approaching substantial equality —is a system of desegregation and integration which provides compensatory education in an integrated environment" (313 F.Supp. at 96).

This decision was clearly correct and within its equitable powers.

Those reasons normally supporting desegregation as a remedy exist in full force in Denver. Students will have heterogeneous, cross-cultural experiences, physical facilities at the inferior school will improve, teacher turnover will be reduced and the psychological stigma attached to attending an inferior school will be eliminated. For the Chicano, an important additional reason exists for desegregation. He often comes to school speaking Spanish as his mother tongue. To isolate him with other Spanish speaking students as the school district has done in the Elmwood, Fairmont and Fairview Elementary Schools deprives him of the opportunity to use his adopted language, English. That is not to say that his retention and development of Spanish should not be encouraged; however, he will never receive a balanced language learning experience in his most crucial years unless he is placed in a position to use Spanish on a regular basis. Oftentimes the only chance he has to speak English is at school because at home, the language in common use is Spanish.

The evidence in the record supports desegregation as a remedy for Chicanos. The testimony of Dr. James Coleman, author of *Equality of Educational Opportunity*, found that both Chicanos and blacks did better

in a school with students of diverse socio-economic backgrounds. (App. 1534a).

Amicus strongly supports the position of Petitioners that the trial court should have ordered system-wide desegregation. Excluding two race inferior schools from relief is simply not a decision grounded on the reality of Denver. Chicanos and blacks need cross-cultural interaction with Anglos, the dominant community in Denver. Maintaining minority schools continues the stigma attached to the schools. Teachers will continue to want to escape, physical facilities will remain inferior and peer group high-achievers will remain absent from these schools. Placing two economically and educationally disadvantaged groups together does not satisfy the policy underlying desegregated education. Professor Coleman found that a school population comprised of two disadvantaged minority groups is ordinarily as inferior as a school with one segregated minority, (App. 1538a).

In view of the facts set forth in Section II B of this brief, Chicanos in the district are themselves directly entitled to affirmative desegregation relief. However, even if this Court finds that the school board has practiced de jure discrimination against blacks only, with the result that blacks but not Chicanos are entitled to affirmative relief, neither sound policy nor the Fourteenth Amendment would permit treating Chicanos as Anglos nor leaving Chicanos completely out of the desegregation process.

Treating Anglos as Chicanos will result in continued segregation of minorities. Because of the proximity

of Chicano and Negro neighborhoods in Northeast Denver it will be poor Negros and Chicanos who are integrated together. Of course, none of the benefits of desegregation will accrue. The effect of such a decision will be to maintain all Anglo schools.[20]

The consequences of considering Chicanos as Anglo can be seen in the Houston desegregation litigation, *Ross v. Eckels,* 434 F.2d 1140, 1148 (5th Cir. 1970). That Court ordered 14 elementary schools paired on a black-white basis. Chicanos were considered white. The result of these pairings was that 13 of the 14 schools were over 80% minority (see Appellant's brief, *Ross, Rodriguez, U.S. v. Eckels,* U.S. Court of Appeals, No. 71-2357, appeal pending from denial of intervention to Chicano plaintiffs).

Recognizing that Chicanos are an identifiable group for equal protection purposes, but leaving them out of a black-Anglo desegregation plan results in different problems. There is the continuing stigma attached to Chicanos of going to isolated second class schools. In addition, the benefits accruing to the black, Anglo and Chicano children from the mutual understanding engendered by cross-cultural interaction would be lost.

Isolating Chicanos from blacks and Anglos also raises serious equal protection questions. No one could dispute that if a school board moving on its own initiative to end a supposedly de facto segregation situation were to desegregate blacks and Anglos to the

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[20] *Green v. County School Board of New Kent County,* 391 U.S. 470 (1968) prescribed a realistic approach to desegregation, an approach that actually works.

exclusion of the Chicanos, it would violate the mandate of equality required by the Fourteenth Amendment. The school board would be treating a discreet, identifiable group differently without any compelling reasons for doing so.[21] It would be ironic if the courts, under the guise of remedying discrimination against one minority could permissibly discriminate against another. And the courts are not of course immune from the requirements of the equal protection clause. *New York Times v. Sullivan*, 376 U.S. 254 (1964); *Cantwell v. Conn.*, 310 U.S. 296 (1940); cf. *Shelley v. Kraemer*, 334 U.S. 1 (1948).

This Court's resolution of desegregation issues in a multicultural school district is crucial. Situations similar to Denver exist throughout the Southwest. Attorneys for Amicus are counsel in cases from Austin, Houston and Dallas, Texas.[22] Other pending litigation involves California cities such as Los Angeles and San Francisco.[23] Equal educational opportunity in America's cities requires desegregation

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[21]Distinctions based on race and ethnicity are the archtypical classifications subject to the strict equal protection standard. *McLaughlin v. Florida*, 379 U.S. 184, 192 (1963). *Loving v. Virginia*, 388 U.S. 1, 9 (1967). See *McDonald v. Board of Election Comm'rs.* 394 U.S. 802, 807 (1969).

> "And a careful examination on our part is especially warranted where lines are drawn on the basis of wealth or race, two factors which independently render a classification highly suspect and thereby demand a more exacting judicial scrutiny."

[22]Austin, *U.S. v. Texas Education Agency*, supra, Houston, *Ross, Rodrigues U.S. v. Eckels*, supra, *Dallas, Tasby v. Estes*, supra.

[23]*Crawford v. Los Angeles Unified School District*, Superior Court of Los Angeles, California, No. 822854; and *Johnson v. San Francisco Unified School District*, U.S. District Court for the Northern District of California, No. C-70 1331 SAW (1971).

plans which realistically take account of their ethnically diverse character.

E. The Trial Court Correctly Ordered a Program For Equalization of Educational Opportunities

Both apart from and ancillary to the issue of desegregation, this Court should reinstate the District Court's order requiring the equalization of school facilities in which racial and ethnic minorities are concentrated. The record is clear that these schools are inferior to the Anglo schools, and this inequality is attributable only to action by the defendant district. As the Fifth Circuit noted in *U.S. v. Jefferson Co.*, 380 F.2d 385, 393-4 (5th Cir. 1967), the equalization of school facilities is an essential precondition to effective desegregation. But if this Court should hold that Chicano schools need not be desegregated, equalization of schools becomes all the more crucial—indeed, it then becomes the only hope for the district's Chicano children to receive a decent education.

The District Court approved a program which contains at least the following:

"1. Integration of teachers and administrative staff;

2. Encouragement and incentive to place skilled and experienced teachers and administrators in the core of city schools;

3. Use of teacher aides and para-professionals;

4. Human relations training for all School District employees;

5. In-service training on both district-wide and individual school bases;

6. Extended school years;
7. Programs under Senate Bill 174;
8. Early childhood programs such as Head Start and Follow Through;
9. Classes in Negro and Hispano culture and history; and
10. Spanish language training." (313 F.Supp. at 99.)

Spanish language training is crucial to development of a Spanish speaking child. If the language and culture that he brings to the school are rejected, his self-esteem and subsequent ability to succeed in school are adversely affected.[24] The use of teacher aides and para-professionals is of great benefit in implementation of these Spanish language programs.

The Court of Appeals reversed the District Court's equalization order in reliance on a resolution of the defendant board (445 F.2d at 1010). This was error. The constitutional rights of minority students should not depend on the good faith of a school board proven to have discriminated. Furthermore, the order of the District Court is much more particular than the resolution and provides specifically for programs for Chicanos. Finally, the school board's plan is not really a plan at all because it is dependent on the vagaries of the finances of the school district.

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[24]Congress has recognized the need for these types of language programs. Bilingual Education Act, 20 U.S.C. Section 880.

CONCLUSION

Wherefore, Amicus Curiae prays that this Court grant the relief requested by the Petitioners and reverse the judgment of the Court of Appeals insofar as it reverses the judgment of the District Court and remand the case to the District Court with instructions that it institute a comprehensive desegregation plan for the Denver school system.

Dated, May 4, 1972.

Respectfully submitted,

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